IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 9.4.2008.

CORAM

THE HON'BLE MR.JUSTICE M.JEYAPAUL

Crl.O.P.No.6806 of 2004
and
Crl.M.P.No.2253 of 2004

1. Murali
2. Dr.Jagannathan
3. Vasudeva Pillai
4. Arumugam
5. Gnanaprakasam
6. Jayaraman
7. Pandian
8. Kamaraj
9. Gopal
10. Anand
11. Kannan

12. Mr.Sudharsanan
Inspector of Police,
Nandambakkam Police Station,
Chennai 600 089.

13. Raju
Sub-Inspector of Police,
Nandambakkam Police Station,
Chennai 600 089. Petitioners

vs.

Gnanasekaran Respondent

Criminal Original Petition filed under section 482 Cr.P.C. seeking to quash the complaint on the file of Judicial Magistrate II, Poonamallee in C.C.No.618 of 2003.

For petitioner : Mr.S.Ashok Kumar, Senior Counsel for
Mr.B.Mahendra Naidu

For respondent : Mr.G.K.Ilanthiraiyan for
Mr.Venkatasubaraju
ORDER
The petition is filed seeking quashment of the criminal proceedings in C.C.No.618 of 2003 on the file of the learned Judicial Magistrate II, Poonamallee.
2. The sum and substance of the private complaint filed by the respondent herein is as follows:-
On 5.1.2002, at about 8.00 am, while the complainant was irrigating his paddy and banana field, A1

to A11 assembled in front of the lands of the complainant and having formed into unlawful assembly armed with deadly weapons, trespassed upon the land of the petitioner and levelled his paddy fields with bulldozer and ransacked the banana trees and caused mischief and thereby they committed offences punishable under sections 147, 148, 447 and 427 of the Indian Penal Code. They also ransacked and removed the velikathan fence around the complainant's lands and took away the motor pumpset and two oil engines used by the complainant for irrigation of the lands. Therefore, they also committed an offence punishable under section 379 of the Indian Penal Code. They also demolished the complainant's pump shed and the nearby house of Mrs.Shanthi, the sister of the complainant and thereby they caused mischief to the tune of Rs.40,000/=. They also took away the household utensils and motor pumpset by engaging Mahindra Van and thereby they committed again an offence punishable under section 379 of the Indian Penal Code. They also threatened the de facto complainant with dire consequences and thereby they committed an offence punishable under section 506(ii) of the Indian Penal Code. A12 and A13 being Inspector and Sub Inspector of Police of Nandambakkam Police Station, having colluded and conspired with A1 to A11, concealed the aforesaid acts and filed referred charge sheet in Crime No.7 of 2002 registered by them on the basis of the first information report lodged by the complainant earlier. Therefore, they are punishable under sections 147, 148, 447, 427, 506(ii) and 379 of the Indian Penal Code.

3. Learned Judicial Magistrate II, Poonamallee has taken the private complaint in C.C.No.618 of 2003 on his file against the petitioners herein who have been ranked as A1 to A13 for the offences punishable under sections 147, 148, 447, 427 and 506(ii) of the Indian Penal Code.

4. The petitioners would contend that the first petitioner Murali, second petitioner Jaganathan and third petitioner Vasudeva Pillai are in possession of the agricultural property in Nandambakkam village. The fourth petitioner is the close friend of the third petitioner. The fifth petitioner and sixth petitioner are his servants. Petitioners 7 to 11 are local residents of Nandambakkam. Petitioners 12 and 13 are the Police Officers attached to Nandambakkam Police Station. The complainant's father was a servant under the third petitioner. The complainant now claims the properties as cultivating tenant. The complainant approached the Tahsildar, Sriperumbudhur to declare him as cultivating tenant. But, his plea was rejected as baseless. He also approached the civil courts seeking the remedy in respect of the property in dispute, but, he could not succeed in any of the courts. Petitioners 1 and 2 had obtained an order preventing the complainant and his father Elumalai Naicker from entering into their lands. Petitioners 1 and 2, having obtained CMDA approval, started developing their lands. The first petitioner is an officer in M/s.Rane Motors and the second petitioner is the Assistant Professor cum Civil Surgeon in Government Hospital, Chennai. They are in fact absentee landlords. They have entrusted the developing work to their servants at Nandambakkam. They were not at all present in the place of occurrence. The complainant kept some unused furniture in front of the gate of the property belonging to Petitioners 1 to 3 and prevented their men from working on their lands. The workers and the local people intervened and handed over all the properties of the complainant with Nandambakkam Police. There was no damage to the property nor was any injury sustained by the complainant as alleged. In fact, the complainant originally approached the police to register a false case. The police filed referred charge sheet finding that the complaint was factually wrong. The learned Judicial Magistrate has not taken note of the aforesaid facts and circumstances of the case beforeever taking cognizance of the case in C.C.No.618 of 2003. Therefore, the private complaint lodged as against these petitioners is liable to be quashed.

5. The court will have to decide whether the criminal proceedings initiated by the complainant/respondent is an abuse of process of law.

6. Learned Senior Counsel appearing for the petitioner would submit that the respondent has the audacity to array even the police officers, who filed referred charge sheet, as accused in this case. The unimpeachable documents produced would go to show that the respondent was never in possession of the subject property and the courts have consistently held that only petitioners 1 to 3 have been in possession and enjoyment of the subject property. When the civil courts have negatived the claim for possession of the respondent, the respondent has filed the present private complaint

abusing the process of law. The respondent, being son of the servant engaged by petitioners 1 to 3, chose to block the way to the field of petitioners 1 to 3 by putting his used articles which were removed and handed over by petitioners 1 to 3 with the help of villagers of Nandambakkam and handed over to Nandambakkam Police. Therefore, it is farfetched to argue that the properties of the respondent stolen by the petitioners were recovered from the custody of petitioners 1 to 3. Therefore, he would submit that the criminal proceedings initiated by the respondents does not merit consideration.

7. Learned counsel appearing for the respondent would contend that the very fact that a recovery was effected from the custody of petitioners 1 to 3 in the aftermath of the complaint given by the respondent would go to establish prima facie that petitioners 1 to 3 along with accused 4 to 11 have committed theft of the articles of the respondent. But, quite unfortunately, petitioners 12 and 13 chose to lay referred charge sheet as though it was a case of mistake of fact suppressing all the relevant materials in this case. The learned Judicial Magistrate has taken the case on file only after considering the prima facie case made out in the complaint lodged by the respondent. The petitioners will have to face the trial and receive the verdict of the Trial Court, it is submitted.

8. It is found that the respondent originally filed first information report setting out the very same allegations as against petitioners 1 to 11. The FIR was registered by the 13th petitioner. But, the 12th petitioner has laid referred charge sheet as mistake of fact after completing the investigation. It appears that the respondent, having been provoked by such final report filed by the 12th petitioner based on the investigation done by the 13th petitioner, has chosen to implicate them also in the private complaint. After all, petitioners 12 and 13 have discharged their official duty as investigating officials. If at all the respondent has any grievance on the referred charge sheet laid by petitioners 12 and 13, the respondent has to challenge the nature of investigation embarked upon by them and the final report that emerged. The police officials cannot be implicated just because they, having investigated the crime, filed referred charge sheet. The approach adopted by the respondent as against the police officials is found to be intimidatory. If such tactics adopted by the respondent is blessed by the court, no investigating official can plunge into probe without fear or favour. Therefore, the court finds that the respondent has laid a complaint as against petitioners 12 and 13 abusing the process of law.

9. The records submitted by petitioners 1 to 3 would go to show that the respondent was not in possession of the property in dispute. It is pertinent to refer to paragraphs 4 and 5 of the order passed by this court in W.P.M.P.No.48826 of 2002 and W.V.M.P. No.1484 of 2002 dated 3.1.2003 which reads as follows:-

" 4. It is seen that there has been earlier litigation between the parties. In the earlier suits filed by the petitioner himself in O.S.Nos.1691 of 1988 and 258 of 1998 on the file of the District Munsif, Poonamallee, the learned District Munsif after considering the entire evidence had come to the conclusion that the petitioner had absolutely no claims for possession and also held that the petitioner had approached the court with unclean hands and with the result, not entitled to the discretionary relief. Thereafter the petitioner had approached the Revenue Authorities, seeking for a declaration for recording his name as a cultivating tenant. The Tahsildar also by his order dated 17.4.1997, rejected the petitioners claim of being a cultivating tenant. Thereafter, he appears to have set up his brother namely, one Kamalakannan, who has also moved the Revenue Authorities, for recognition as the cultivating tenant. The Sub-Collector by order dated 31.10.1997 had rejected the petition filed by the brother of the petitioner. On appeal also, the appellate authority confirmed the order by order dated 8.7.1999. In a detailed order, the appellate authority has held that there was no basis for the claim of the petitioner.

5. In the above background, the only issue which arises for consideration is as to whether the petitioner has made out a prima facie case of being in possession of the property having regard to the aforesaid facts and findings rendered in the earlier proceedings, the said issue has to be found against the petitioner."

10. The observations made by this court in the writ proceedings initiated by the petitioners would go

to show that the suits filed by the respondent in O.S.No.1691 of 1988 and 258 of 1998 on the file of the District Munsif, Poonamallee stood dismissed rejecting outright the claim of the respondent for possession. The respondent also had approached the revenue authorities to record him as a cultivating tenant. Such a plea before the revenue authority also was rejected. It appears that the respondent has set up his brother one Kamalakannan whose claim before the revenue authorities to declare him as cultivating tenant also was dismissed. The appeal preferred as against this order was also dismissed. It has been consistently held by the revenue authorities that there was no basis for the claim made by the respondent. In fact, the respondent could not establish his possession over the subject property. The Miscellaneous Petition filed in the writ petition seeking interim injunction to restrain petitioners 1 to 3 herein in respect of the subject property bearing S.No.363, 364, 365, 396, 397 and 393 Manapakkam Village, Sriperumbudhur Taluk was ultimately dismissed by this court. When it is found that the respondent has no right to be in possession of the property and he was also not in actual possession thereof, the question of commission of offence of criminal trespass by petitioners 1 to 11 does not arise.

11. Petitioners 1 to 3 have shown before the court that used articles kept outside the subject property to block the way were retrieved and handed over to the investigating official and the same were ultimately delivered to the respondent. In fact, the learned Judicial Magistrate was not convinced with the allegation that petitioners 1 to 11 committed the offence of theft.

12. It is found that the respondent, who has not been in possession of the property in dispute, has simply lodged the complaint as though petitioners 1 to 11, having formed into unlawful assembly with deadly weapons, committed criminal trespass and vandalism. It is a clear abuse of process of law as contended by the learned counsel appearing for the petitioners.

13. In view of the above, the entire criminal proceedings in C.C.No.618 of 2003 on the file of Judicial Magistrate II, Poonamallee stands quashed. The petition stands allowed. The connected Miscellaneous Petition stands closed.

ssk.

To

Judicial Magistrate II,
Poonamallee.